

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

RODERICK WARNER WHELESS,)	
)	
Petitioner,)	
)	1:20CV403
v.)	1:07CR230-1
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

ORDER

This matter is before this court for review of the Recommendation ("Recommendation") filed on November 30, 2020, by the Magistrate Judge in accordance with 28 U.S.C. § 636(b). (Doc. 84.) In the Recommendation, the Magistrate Judge recommends that this action be denied as filed and, to the extent it may be a motion under § 2255, dismissed sua sponte for failure to obtain certification for this § 2255 application by filing a Motion for Authorization in the Court of Appeals as required by 28 U.S.C. §§ 2255 and 2244 and Fourth Circuit Local Rule 22(d). The Recommendation was served on the parties to this action on November 30, 2020. (Doc. 85.) Petitioner filed timely objections, (Doc. 86), to the Recommendation. The court notes that in his objections, Petitioner requests the proper forms from the Clerk's Office to seek permission to file a second or successive motion under 28 U.S.C. § 2255. Therefore, the court

will direct the Clerk's Office to send Petitioner the proper forms at his request.

This court is required to "make a de novo determination of those portions of the [Magistrate Judge's] report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). This court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the [M]agistrate [J]udge. . . . [O]r recommit the matter to the [M]agistrate [J]udge with instructions." Id.

This court has appropriately reviewed the portions of the Recommendation to which objection was made and finds they do not change the substance of the United States Magistrate Judge's Recommendation, (Doc. 84). This court therefore adopts the Recommendation.¹

IT IS THEREFORE ORDERED that the Magistrate Judge's Recommendation, (Doc. 84), is **ADOPTED. IT IS FURTHER ORDERED** that Petitioner's document entitled "Petitioner's Motion Requesting a Downward Variance in Light of his Postsentencing Conduct Pursuant [to] 18 U.S.C.S. § 3661," (Doc. 74), is construed as a motion to vacate, set aside, or correct sentence

¹ Petitioner's Motion to Request Compassionate Release, (Doc. 76), as supplemented, (Docs. 80, 81, 82, 87), and his related requests for counsel (Docs. 75, 79), have been separately briefed and are not addressed in the Recommendation or this Order.

pursuant to 28 U.S.C. § 2255, and that this action is **DENIED** as filed and, to the extent it may be a motion under § 2255, dismissed without prejudice for failure to obtain certification for this § 2255 application by filing a Motion for Authorization in the Court of Appeals as required by 28 U.S.C. §§ 2255 and 2244 and Fourth Circuit Local Rule 22(d).

IT IS FURTHER ORDERED that the Clerk send Petitioner a copy of this Order, instruction forms for filing § 2255 motions in this Court and Motions for Authorization in the Court of Appeals, and four copies of § 2255 motion forms (more copies will be sent on request). Petitioner should keep the original and two copies of the § 2255 motion which can be submitted in this Court if Petitioner obtains approval from the Fourth Circuit.

A Judgment dismissing this action will be entered contemporaneously with this Order. Finding no substantial issue for appeal concerning the denial of a constitutional right affecting the conviction, nor a debatable procedural ruling, a certificate of appealability is not issued.

This the 30th day of April, 2021.


United States District Judge